



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED	
DATE: 4 March 2024	
SIGNATURE:	

Case No. A206/2020

In the matter between:

MAHLANGU, BOY

APPELLANT

And

THE MINISTER OF POLICE

RESPONDENT

Coram: Basson & Millar JJ et Rangata AJ

Heard on: 14 February 2024

Delivered: 04 March 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines system of the GD and by release to SAFLII. The

date and time for hand-down is deemed to be 10H00 on 04 March 2024.

Summary: Action for damages – appeal against the dismissal of a claim for damages - unlawful assault – evidence of appellant and witnesses establish on a balance of probabilities that an officer of the SAPS assaulted appellant – no evidence before the court *a quo* to establish otherwise – misdirection by the court *a quo* in dismissing the action - Appeal upheld with costs and the respondent ordered to pay such damages as may be proven.

ORDER

It is Ordered:

- [1] The appeal is upheld with costs.
- [2] The order of the court *a quo* is set aside and replaced with the following:
- "[1] The defendant is liable to the plaintiff for such damages as he may prove arising out of the incident on 12 February 2015.
- [2] The defendant is ordered to pay the plaintiff's costs of the action to date."

JUDGMENT

RANGATA AJ, (BASSON & MILLAR JJ CONCURRING)

INTRODUCTION

- [1] This is an appeal against the dismissal of the appellant's claim for damages resulting from an unlawful assault by a member of the South African Police Services.
- [2] The appellant testified that in the early hours of 12 February 2015, at around 04h00, he was assaulted by members of the respondent and sustained several bodily injuries. He was seated on a beer crate outside the Manthari Tavern in Waterval. Uniformed members of the South African Police Services (SAPS), one of whom was wearing a name tag of 'Mahlangu', approached him and instructed him to face the wall.
- [3] He was searched. They found in his pockets a cell phone and some money. He attempted to turn and look at what was happening but was met with a slap to his face. He was beaten and kicked in the back. He also hit his right eye as well as his left knee against the stoep, sustained a cut below the right eyebrow, and bled.
- [4] The next day he obtained a J88 form from the police station and then consulted with Dr. Masango who treated him and also filled out the J88 form.
- [5] He did not return the J88 form to the police station - his reason being that he did not have the money to do so.
- [6] Mr. Makhuba, a bar attendant at the tavern, testified that on 12 April 2015, around 04h00, whilst working at the tavern, members of the respondent entered the tavern. They enquired from him about a vehicle that was parked outside the tavern. They wanted the vehicle's owner. They instructed the customers who were in the tavern to stand still and started to beat them.
- [7] Mr. Makhuba testified that he was told to go outside with the police officers so he could be shown the motor vehicle he was being asked about. On his way outside to see the motor vehicle, he met the appellant at the door. He was bleeding on his right side and told him that the police had assaulted him.

- [8] Dr. Masango, a medical practitioner, testified that he treated the appellant on 13 April 2015 in his rooms. He stated that he completed and signed the J88 form brought by the appellant. His clinical findings were that the appellant presented with hip joint pain and right knee pain following the alleged assault by members of the respondent, as reported by the appellant. He was treated with analgesics to manage pain. He confirmed that the form recorded the examination date as 22 May 2015.
- [9] However, he explained that he could have mixed up the examination date with the review date and that the correct date when he examined the appellant was 13 April 2015. He verified from his office records that the appellant did not visit his rooms on 22 May 2015 and that he made a mistake in writing the examination date to have taken place on 22 May 2015 instead of 13 April 2015.
- [10] The respondent called one witness, Mr. Mahlangu, who testified that he is employed by SAPS as a Sergeant at Siyabuswa Police Station. He testified that the area of Siyabuswa is patrolled on a 12-hour shift basis and is subdivided into four sectors. Two police officers are allocated per sector. Sometimes the officers overlap with each other's sectors as backup or when assistance is required. He testified that the area where the tavern is located, and the alleged assault took place, was Sector 4 (Waterval B). Constable Nkambule and Constable Maphangela were posted in sector 4 and Captain Mahlangu was the inspector for that sector on the night in question.
- [11] His evidence was that besides himself, there are at least two other police officers with the surname Mahlangu in the same police station. He testified that he did not know anything about the alleged assault. He did not dispute that members of the SAPS could have assaulted the appellant or that when the appellant referred to a 'Mahlangu', it may not necessarily have been him.
- [12] After considering the evidence, the court *a quo* dismissed the appellant's case. It did so on the basis that the J88 and evidence of Dr. Masango did not corroborate the evidence of the appellant as to the date when he first saw him and that his

explanation for the date discrepancy on the J88 was improbable. It was on this basis that he declined to find the J88 and the evidence of Dr. Masango as being corroborative of the appellant's evidence. The evidence of Mr. Makhuba was found to be unhelpful as he did not see the assault and was only told by the appellant that he was assaulted.

- [13] The issue that arises for consideration in this appeal is whether the appellant succeeded in establishing that he was assaulted by the SAPS. Since the court *a quo* did not make any credibility findings, consideration must be given to whether the appellant succeeded in establishing the assault on a balance of probabilities.

- [14] The evidence of the appellant was not challenged or contradicted. It was corroborated by the evidence of Mr. Makhuba, who although he did not see the appellant being assaulted, was on the scene and both corroborated the presence there of the appellant as well as members of the SAPS. His evidence that the appellant told him that he had been assaulted and his contemporaneous observation of the appellant's injuries are part of the *res gestae*¹ and corroborative of the evidence of the appellant.

- [15] Neither the content of the form J88 nor the evidence of Dr. Masango are destructive of the evidence of the appellant and Mr. Makhuba. It was never suggested to Dr. Masango that his evidence was impeachable for any reason other than the discrepancy with regard to the dates. To my mind, this was adequately explained. However, even if Dr. Masango's evidence is disregarded, this is of no consequence in the consideration of this appeal.

- [16] The evidence of Mr. Mahlangu goes no further than to establish that he personally, was neither present on the evening in question nor involved in any assault of the appellant. He conceded that he was unable to say whether any

¹ "[E]vidence of facts may be admissible as part of the *res gestae* if these facts are so closely connected in time, place, and circumstances with some transaction which is at issue that they can be said to form part of that transaction." Choo Evidence (2012) 292 quoted in Principles of Evidence, PJ Schwikkard & SE van der Merwe, Juta, 4th Ed, 2016 at p 306.

other member of the SAPS named 'Mahlangu' had assaulted the appellant. The respondent failed to lead the evidence of any other witnesses.

[17] The evidence led on behalf of the appellant establishes to my mind, on a balance of probabilities, that he was indeed assaulted by a member of the SAPS. For this reason, the appeal should succeed.

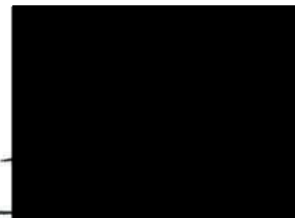
[18] In the circumstances I propose the following order:

[18.1] The appeal is upheld.

[18.2] The order of the court a quo is set aside and replaced with the following:

"[1] The defendant is liable to the plaintiff for such damages as he may prove arising out of the incident on 12 February 2015.

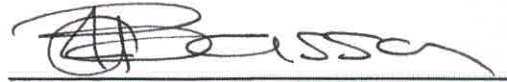
[2] The defendant is ordered to pay the plaintiff's costs of the action to date."



B RANGATA

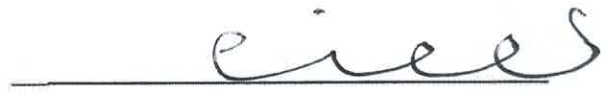
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED


A BASSON

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

14 FEBRUARY 2024

JUDGMENT DELIVERED ON:

04 MARCH 2024

COUNSEL FOR THE APPELLANT:

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ADV. H MPE

INSTRUCTED BY:

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THE STATE ATTORNEY, PRETORIA

REFERENCE:

MR. T CHOKOE